

1 Dara Tabesh, CA Bar No. 230434  
dara.tabesh@ecotechlaw.com  
2 EcoTech Law Group, P.C.  
331 1<sup>st</sup> St. Suite C  
3 San Francisco, CA 94105  
Telephone: (415) 503-9164  
4 Facsimile: (415) 651-8639

5 Filipp I. Kofman (VA Bar No. 82302) (*pro hac vice* application forthcoming)  
fk@legal-counsels.com  
6 Kevin R. Garden (VA Bar No. 30244) (*pro hac vice* application forthcoming)  
kg@legal-counsels.com  
7 International Legal Counsels, PC  
901 North Pitt Street, Suite 325  
8 Alexandria, VA 22314  
Tel.: (703) 535-5565  
9 Fax: (703) 977-1330

10 Attorneys for Plaintiff  
Vertamedia LLC

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION  
14

15 VERTAMEDIA LLC, a Nevada  
16 Corporation,

17 Plaintiff,

18 v.

19 BITESIZE NETWORKS, INC. f/k/a  
20 MEVIO, INC., a Delaware Corporation,

21 Defendant.  
22

Case No.

**COMPLAINT**

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**PLAINTIFF VERTAMEDIA LLC'S COMPLAINT**

1. Vertamedia LLC ("Vertamedia" or "Plaintiff"), by and through its undersigned attorneys, files this Complaint against BiteSize Networks, Inc. f/k/a Mevio, Inc. ("Mevio" or "Defendant") and states as follows:

**NATURE OF THE ACTION**

2. This is an action for breach of contract and *quantum meruit* arising from Mevio's failure to make payment to Vertamedia with respect to services sought by, contracted for, received and accepted by Mevio. As of the date of this Complaint, Mevio has not paid, and has repudiated its obligation to pay, \$489,700.52 in invoiced services provided to Mevio by Vertamedia pursuant to a services agreement between the parties. Vertamedia now brings this action in order to recover the \$489,700.52 owed to it by Mevio, in addition to prejudgment interest and other monetary awards as requested by Vertamedia and deemed appropriate by this Court.

**PARTIES**

3. Plaintiff Vertamedia LLC is a limited liability company organized under the laws of the State of Nevada and having its registered address at 5348 Vegas Dr. #1391, Las Vegas, NV 89108.

4. Defendant BiteSize Networks, Inc. f/k/a Mevio, Inc. is a corporation incorporated under the laws of the State of Delaware and having its principal place of business at 577 2nd Street, Suite 203, San Francisco, CA 94107.

**JURISDICTION AND VENUE**

5. This Court has original jurisdiction over this action because Vertamedia and Mevio are citizens of different states and Vertamedia's claims for relief exceed the sum of \$75,000, exclusive of interest and costs and without considering counterclaims. *See* 28 U.S.C. § 1332.



1           14.     The advertiser pays Vertmedia only for user clicks on its advertisements (so called  
2     “clicks-through”), which redirect the user to the advertiser’s website, thereby generating traffic  
3     for the website.

4           15.     When a user clicks on a PPC contextual advertisement, she leaves that website and  
5     is redirected to the advertiser’s website.

6           16.     When a user clicks on a CPV pop-up/pop-under advertisement, she does not leave  
7     the current website that she is on, but rather, a separate browser window opens behind or above a  
8     user’s active browser window, which then is automatically directed to the advertiser’s website.

9           17.     All online traffic that Vertamedia provides through its publishers is filtered both  
10    by a third-party, click-fraud detection tool (provided by Adometry, Inc.), as well as by internal  
11    predictive click-quality scoring tools to ensure that the clicks-through are made by legitimate  
12    potential customers and not generated by software or other improper means.

13          18.     On September 12, 2012, Mevio registered as an advertiser through Vertamedia’s  
14    website <www.vertamedia.com>, thereby agreeing to the Vertamedia Terms of Services. (See  
15    Exhibit A (correspondence from Mevio’s representative to Vertamedia confirming registration of  
16    Mevio’s account on <www.vertamedia.com>).)

17          19.     On October 1, 2012, Vertamedia and Mevio entered into a Traffic Vendor  
18    Agreement (the “Agreement”). (See Exhibit B.)

19          20.     Pursuant to the terms of the Agreement, Mevio engaged Vertamedia to direct  
20    online traffic to Mevio’s websites and applications, specifically to its <www.mevio.com> website  
21    (including its subdomains, which are webpages that are related to the <www.mevio.com> main  
22    webpage).

23          21.     Vertamedia agreed to deliver website traffic to Mevio in accordance with a daily  
24    payment cap (the “Daily Cap”) set by Mevio.

25          22.     A Daily Cap is a dollar value in excess of which Mevio would not be charged for  
26    traffic provided by Vertmedia for that day. The Daily Cap could be changed by Mevio on a daily  
27    basis.  
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1           23.     In order to change the Daily Cap, Mevio would send an e-mail to Vertamedia  
2 requesting a revised Daily Cap, which Vertamedia would implement going forward. If  
3 Vertamedia did not receive an e-mail from Mevio requesting a revised Daily Cap, the prior day's  
4 Daily Cap would be implemented for that day. (See Exhibit D (correspondence from Mevio's  
5 representative to Vertamedia describing the Daily Cap system).)

6           24.     Per the Agreement, within ten (10) calendar days of each month, Vertamedia  
7 provided to Mevio an invoice setting forth the traffic provided to Mevio for the previous month  
8 and amount due to Vertamedia pursuant to that invoice. (Exhibit B at 2-3.)

9           25.     Between October 2012 and August 2013, Vertamedia delivered traffic to Mevio,  
10 posted invoices in accordance with the above procedure, and received timely payment from  
11 Mevio.

12           26.     On October 1, 2013, Vertamedia sent to Mevio an invoice for traffic ordered by  
13 Mevio and delivered by Vertamedia for the period of September 1, 2013-September 30, 2013, in  
14 the amount of \$411,441.52 (the "September Invoice"). (Exhibit C.)

15           27.     In the beginning of October 2013, Mevio began lowering its Daily Cap.

16           28.     Mevio explained that it was lowering its Daily Cap because it was experiencing a  
17 lower demand from its users.

18           29.     On October 16, 2013, however, Mevio increased its Daily Cap by 100%. (See  
19 Exhibit E.)

20           30.     On October 17, 2013, Mevio again increased its Daily Cap, this time by 50%. (See  
21 Exhibit F.)

22           31.     In the meantime, Mevio had failed to make any payment toward the September  
23 Invoice, which, as of October 16, 2013, was overdue.

24           32.     On October 18, 2013, Vertamedia's representative spoke to Jennifer White,  
25 Mevio's Senior Vice President of Sales and Business Development, regarding the unpaid  
26 September Invoice. Ms. White indicated that the delay in payment was due to an issue Mevio  
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1 was having collecting payment from one of its largest clients. Ms. White reiterated Mevio's  
2 commitment to paying the September Invoice in full.

3 33. On that day, Mevio reduced its Daily Cap to zero, effectively stopping the delivery  
4 of Vertamedia's services to Mevio. (See Exhibit G.)

5 34. On October 31, with the September Invoice still unpaid, Vertamedia's  
6 representative again spoke to Ms. White, who indicated that Mevio was facing financial  
7 difficulties arising from a multi-million dollar chargeback from its client. She promised,  
8 however, that Mevio would pay the September Invoice, less \$24,000, in December 2013. Ms.  
9 White stated that the \$24,000 balance on the September Invoice would be paid as soon as Mevio  
10 resolved the chargeback issue with its client.

11 35. On December 11, 2013, Vertamedia's representative again contacted Mevio to  
12 inquire when payment of the September Invoice would be made. Ms. White responded that  
13 Mevio was still waiting to receive payments from its clients before making payment to  
14 Vertamedia. (See Exhibit H.)

15 36. Despite its assurances that payments would be made, Mevio did not make any  
16 payments toward the September Invoice in December.

17 37. On November 4, 2013 Vertamedia issued the final invoice under the Agreement  
18 for traffic delivered by Vertamedia to Mevio for the period between October 1, 2013-October 18,  
19 2013, for \$78,259.00 (the "October Invoice" and together with the September Invoice, the  
20 "Invoices"). (Exhibit I.)

21 38. On January 9, 2014, Mevio's COO/CFO Holli Bohren notified Vertamedia that  
22 Mevio would not be making payment to Vertamedia for the Invoices because it deemed that  
23 Vertamedia provided Mevio with fraudulent traffic. (See Exhibit J.)

24 39. Prior to this new assertion, Mevio had never once informed Vertamedia that it  
25 believed that it was receiving fraudulent traffic from Vertamedia. Instead, Mevio had stated that  
26 it was not paying the Invoices due to its financial situation.  
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1           40.     Mevio was at all times aware that Vertamedia's traffic provided to Mevio was  
2 verified as non-fraudulent by a third party, *i.e.*, Adometry, Inc. ("Adometry") pursuant to the  
3 Adometry Application Services Agreement. (*See Exhibit K.*)

4           41.     Throughout the term of its relationship with Mevio, Vertamedia used Adometry,  
5 Inc., to assure the quality of Vertamedia's delivered traffic.

6           42.     All traffic delivered by Vertamedia to Mevio was checked against Adometry's  
7 block lists, which were updated constantly and provided to Vertamedia by Adometry on a daily  
8 basis.

9           43.     Upon information and belief, Adometry's block lists included IP addresses of  
10 known offenders, servers at co-location facilities that have no known human traffic origination,  
11 comprehensive list of known bots (UserAgents used by spider and crawlers), and ad providers  
12 used to crawl sites, click on links, and test ad campaigns.

13           44.     Traffic that matched Adometry's block lists was immediately blocked, and  
14 consequently, was not delivered to Mevio.

15           45.     Vertamedia also verified the quality of the traffic it provided to Mevio through a  
16 variety of industry-standard internal quality screening tools, including CAPTCHA Tests,<sup>1</sup> Blank  
17 Page Tests,<sup>2</sup> User Agent Checks,<sup>3</sup> Referrer Checks,<sup>4</sup> and JS Tests.<sup>5</sup>

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19           <sup>1</sup> A CAPTCHA is a challenge-response test used by publishers to verify that their users  
20 are persons, as opposed to bots (which are automated, non-human users). It typically involves a  
21 user manually typing in a group of letters and numbers which are set out in very unusual fonts in  
22 order for the user to access a website, making it very difficult for a bot to access the website.  
23 Vertmedia uses the passage rate of the publisher's users to evaluate the quality of the publisher's  
24 traffic.

25           <sup>2</sup> A click test where a portion of the clicks from a publisher's users are directed to a blank  
26 page with invisible banner adds. The invisible banner advertisements are likely to be clicked only  
27 by fraudulent traffic, allowing Vertamedia to detect such fraudulent traffic.

28           <sup>3</sup> Vertamedia's system checks the user's information (operating system, browser version,  
etc.) when a search request is made and compares it to that user's information when the user  
clicks on advertisements. Traffic that is altered between search request and click-through is  
subject to a higher risk of being fraudulent.

<sup>4</sup> Vertamedia's system checks the referrer URL of the search and click-through, which  
would be different if traffic is fraudulent.





60. As a result, Mevio has been unjustly enriched by receipt and enjoyment of Vertamedia's services without payment and for which payment was expected and requested, the value of such enrichment being equal to \$489,700.52.

**WHEREFORE**, Vertamedia respectfully requests the Court to grant the following relief:

C. Such additional relief as the Court shall deem necessary and proper.

Attorneys for Plaintiff